



Alabama Department of Environmental Management
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February 5, 2010

MEMORANDUM

TO: Environmental Management Commission

COPY TO: Debi Thomas

FROM: John P. Hagood 
Director

SUBJECT: ADEM Update

I hope this communication finds you in good health and spirits. In preparation for the next Commission meeting I am writing to update you on several items of interest. You should also have recently received some information from me on ozone standards. As with all communication, please let me know if you have any questions regarding the information I sent on ozone standards.

Legislative and Budgets

The Legislature is currently approximately one third of the way through the 2010 Regular Session, and the proposed Executive Budget for FY11 has been introduced. The proposed budget cuts ADEM's General Fund appropriation by \$2,152,234, or around 30%. Of these cuts, \$856,369 would be cut from operations. This is an amount ADEM can absorb for another fiscal year or maybe two, but long term planning will suffer with these continued cuts in funding.

There are a number of bills that ADEM is monitoring during this session. We have seen a number of these bills before and we have contacted the appropriate lawmakers with any concerns we have. Attached to this memo you will find our tracking sheet thus far.

Greenhouse Gas Endangerment Finding

As a follow-up to the request from the previous meeting concerning the request of an investigation into the possibility of filing an objection to EPA's climate change endangerment finding, ADEM tendered such a request in December of last year. Since that time, Alabama Attorney General Troy King has decided to file an objection in court on behalf of the state.

Perry County Landfill

EPA's decision to allow disposal of the Tennessee Valley Authority's remediation waste in a Perry County landfill has generated a lot of activity. ADEM staff has worked diligently to ensure itself that the landfill is in compliance with all laws and regulations. The issues in Perry County are exacerbated by the media and public scrutiny produced due to this incident and the resulting waste stream. The recent involvement of an attorney representing 150 residents opposing the remediation waste at that landfill has

also increased the scrutiny. Multiple 60-day-notices have been filed under various federal acts, the most peculiar of which was filed under the Clean Air Act alleging that the remediation waste emitted an odor that caused health problems.

These notices have provoked EPA to continually question our staff on multiple compliance issues. As this practice by EPA started becoming unnecessarily resource-intensive for ADEM, Marilyn Elliott and I scheduled a meeting with EPA Region IV on January 25, 2010. During the discussion, I produced a jar containing a sample of the remediation waste I had our inspectors procure from an incoming rail car. During the meeting I opened the jar and had EPA representatives smell the contents, at which point they acknowledged they could smell nothing. The outcome of this meeting was an acknowledgement between EPA Region IV and ADEM that the incremental program scrutiny they were applying to Alabama's Solid Waste Program was not conducive to the successful implementation of environmental laws and regulations. We have since developed a cooperative relationship with Region IV on this matter.

The most recent Perry County development that has aggravated the situation is the filing of a petition for bankruptcy by the owners of the landfill in question. This filing caused concern on ADEM's part as to continued compliance with the landfill's financial assurance requirements. These concerns prompted the letter attached to this memo.

Petition for Withdrawal of NPDES Authority

We received the petition on a Thursday and reviewed it Friday and through the weekend. By Monday morning, Marilyn Elliott and I agreed that there should be no attempts to negotiate a settlement under this petition. ADEM should focus on the receipt of a quick and full denial of the petition. ADEM's General Counsel, Olivia Rowell, heads up our team to defend the legal challenge, and she will be assisted by programmatic experts throughout ADEM.

Our initial review of the 26 points to this petition (labeled A-Z) revealed that most of the allegations revolve around the Petitioners' misunderstanding of EPA-approved work plans or a misunderstanding of the contents of permits. Of the 26 petition allegations presented, there is one outside the authority of ADEM. Point "T" relating to NPDES conflict of interest involves interpretations of the law which will ultimately be made at the federal level.

At the January 25th meeting with EPA we also discussed the recent petition filed by environmentalists to withdraw the NPDES authority from Alabama. The EPA representatives generally agreed with our approach to the petition and our overall assessment of the allegations. EPA also intimated that the current system of general and specific recusals on NPDES matters by individuals should work. EPA did note a need to pay careful attention to the letters of Carol Browner that were made exhibits to the petition. It is interesting to note that the Commission developed rules in 2006 in an attempt to clarify and strengthen conflict of interest policy. The lead petitioner, Mr. David Ludder, commented on those rules and questioned the authority of the Commission to promulgate such rules. In those comments, Mr. Ludder also stated that the full disclosure of all income sources would be needed to implement the rules. Largely based upon Mr. Ludder's comments concerning the Commission's authority, the pursuit of these rules was abandoned.

Beyond the petition, there are several opportunities for ADEM to engage in public education and outreach targeting conservation groups and other stakeholders to demonstrate the effectiveness of our NPDES program. Even before the petition was filed, Marilyn Elliott and I had taken significant steps to

remove bureaucratic impediments to inspections and enforcement actions and put more boots on the ground. We feel this will help the NPDES enforcement program to move beyond becoming a complaint driven program.

Website and Complaint System

Finally, we are working on two internal projects, the web site and a new complaint system. We expect the website to be live by early next week. The website will feature several compliance assistance and education tools and will also pay particular attention to informing the public of notices and other documents through the use of an interactive map. The complaint system is under development with the ultimate vision being a system that permeates the department to provide more transparency and interaction with the public. ADEM also plans to incorporate an on-line tool where a complaint can be filed and tracked by a complainant through the entire compliance determination and enforcement processes.

I thank you for the opportunity to serve in this capacity. Please contact me with any questions you may have.

JPH/ghe

Attachments(2)

2010 Legislative Tracking						
Bill #	Sponsor	Committee	Committee Chairman	Bill Description	Status	Notes
HB29	Mitchell	Commerce	McDaniel	Toxic waste, ADEM required to identify high impact areas for toxic contamination by counties	1st Read, First House	It is very unclear how ADEM will implement
HB36	Jackson	County & Municipal Government	Dukes	Solid waste, application filed with ADEM for new facility, local governing body approval, deemed denied if not approved within 180 days	1st Read, First House	Similar bill introduced last year, ADEM has no position
HB195	Gipson	Commerce	McDaniel	Greenhouse gas emissions, state agency prohibited from adopting or enforcing a state or regional program to limit or regulate motor vehicle fuel economy or from implementing a cap and trade program without legislative authorization	1st Read, First House	Sponsor agrees to amendment to avoid any effects on air program monitoring
HB211	Ward	Judiciary	Black	Criminal littering, crime further provided	3rd Read,	
HB290	Knight	Government Appropriations	Knight	General fund budget, appropriations for ordinary expenses of executive, legislative, and judicial departments	1 Read, First House	30% cut to GF appropriation; discussions with budget chairmen ongoing
HB303	Jackson	Agriculture and Forestry	Jackson	Fertilizers, local ordinance, rule, or regulation pertaining to prohibited subject matter of Agriculture and Industries Department	1st Read, First House	will have an effect on MS4 as introduced; amendments being drafted
HB360	Taylor	Madison County Legislation	McCutcheon	Madison Co., rock quarries, location near schools regulated outside corporate limits of municipality	1st Read, First House	local zoning; no position
HB381	Mask	Agriculture and Forestry	Jackson	Lakes with restrictions for houseboats and vessel size and speed, Lake Jordan included	1st Read, First House	no position

SB61	Benefield	Agriculture, Conservation, and Forestry	Benefield	Farm operations, nuisance actions, may not be declared as public or private nuisance or to be in violation of municipal or county ordinance if operated lawfully and under certain conditions, Family Farm Preservation Act	2nd Read, Placed on calendar, 3rd Read pending, favorable	monitoring for any effects on CAFO program
SB83	Benefield	Agriculture, Conservation, and Forestry	Benefield	Fertilizers, local ordinance, rule, or regulation pertaining to prohibited, subject matter of Agriculture & Industries Department	1st Read	will have an effect on MS4 as introduced; amendments being drafted
SB96	Mitchell	Governmental Affairs	Mitchell	Solid waste, application filed with ADEM for new facility, local governing body approval, deemed denied if not approved within 180 days	2nd Read, Placed on calendar, 3rd Read pending, favorable	Similar bill introduced last year, ADEM has no position
SB103	Little, Z	Governmental Affairs	Mitchell	Onsite Wastewater Board, membership, definitions, classes of licenses, application and issuance procedures, records, disciplinary powers, penalties increased	2nd Read, Placed on calendar, 3rd Read pending, favorable	monitoring for any effects on UIC program
SB195	Little, T	Judiciary	Penn	Criminal littering, crime further provided for, enforcement by county license inspector and solid waste officer, distrib. Of fines	2nd Read, Placed on calendar, 3rd Read pending, favorable	monitoring
SB209	Bedford	Finance and Taxation General Fund	Bedford	Supplemental appropriations from General Fund, to Corrections Department, Medicaid Agency, Health Department for ALS clinic, ADEM for Pollution Control Grant Fund, and Supreme Court for fiscal year ending 9/30/10	2nd Read, Placed on calendar, 3rd Read pending, favorable	supplemental appropriation to Pollution Control Grant Fund included

SB249	Orr	Local Legislation No. 1	Little, Z	Morgan Co. source water protection areas provided for public water supply systems, storage and distribution facilities for hazardous material within certain distance of source water, prohibited, municipal permits, civil remedies	2nd Read, Placed on calendar, 3rd Read pending, favorable	monitoring for effects on drinking water
SB288	Keahey	Energy and Natural Resources	Keahey	Trucks, weight limit for vehicles equipped with a functioning auxiliary power or idle reduction technology increased	2nd Read, Placed on calendar, 3rd Read pending, favorable	monitoring
SB296	Little, Z	Energy and Natural Resources	Keahey	Lewis Smith Lake, surface coal mining operations prohibited within certain distance of, area of protection extended	2nd Read, Placed on calendar, 3rd Read pending, favorable	local zoning; no position

JOHN P. HAGOOD
DIRECTOR



BOB RILEY
GOVERNOR

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February 4, 2010

Mr. John W. Delvac
Chief Operations Officer
Perry County Associates, LLC
3280 Peachtree Road, NW, Suite 1400
Atlanta, Georgia 30305

Dear Mr. Delvac:

RE: Perry County Associates (PCA) Landfill
Solid Waste Permit No. 53-03

This letter is to confirm our conversation of January 26, 2010 concerning the filing by Perry Uniontown Ventures I, LLC in United States Bankruptcy Court to reorganize under Chapter 11 of the U.S. Bankruptcy Code. As we discussed during our telephone conversation, the Department's primary concern is the compliance status of the referenced facility with the applicable environmental requirements. Specifically, since our conversation, the Department has re-evaluated the compliance status of the landfill with respect to the solid waste financial assurance requirements of ADEM Admin. Code r. 335-13-4-.28.

At present, the PCA Landfill has established a trust fund with U.S. Bank to cover its financial assurance obligations for closure and post-closure care costs. As part of our re-evaluation of the financial assurance compliance status, the Department has reviewed the closure and post-closure cost estimates prepared on your behalf by your engineering consultant, Hodges, Harbin, Newberry and Tribble. It is our determination that those cost estimates appear to be sufficient to meet the requirements of Rules 335-13-4-.28(2) and (3).

Since the financial assurance being used by this facility is a trust fund, annual payments may be made as specified in Rule 335-13-4-.28(5)(a)2. This regulation states: "Payments into the trust fund shall be made annually by the owner or operator over the life of the MSWLF permit or over the remaining life of the MSWLF, whichever is shorter..." Prior to the recent bankruptcy filing, PCA Landfill appeared to be meeting this requirement by making annual payments based on a pay-in period of five years -- the life of the landfill's permit. Under this schedule there are two outstanding payments, each approximately \$580,000 and due in the fall of 2010 and 2011, needed to fully fund the financial assurance trust fund for those portions of the landfill which have been authorized to accept waste for disposal.

However, given the ongoing bankruptcy case, the determination as to the "remaining life" of the landfill may become a matter of interpretation outside our full control. Paragraph 26 of

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Mr. John Delvac

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your Complaint for Bankruptcy filed on January 26 alleges that a payment to the note-holders was missed. Non-payment of this note could conceivably jeopardize ownership of the landfill, causing a chain of events under the heading of compliance that will negatively affect ADEM's duty to the public.

Within 7 days of receipt of this letter, please respond in writing with your assessment of the impact of the bankruptcy filing on the continued operation of the landfill. Also, please provide the Department with a discussion of your desired outcome of the bankruptcy case and your anticipated timetable for resolving this issue.

Alternatively, should you choose to deposit the remainder of the outstanding balance into the financial assurance trust fund immediately rather than over the pay-in period previously established, these issues would be moot and the Department's concerns about your compliance with the financial assurance requirements would be assuaged.

Should you have any questions regarding our concerns, please contact Phillip Davis of the Solid Waste Branch at 334-271-7755.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Hagood", written over a printed name and title.

John P. Hagood
Director

JPH/PD/ghe

cc: Stanley Meiburg, US EPA Region 4